



City of Seattle

Gregory J. Nickels, Mayor
Department of Planning and Development
D. M. Sugimura, Director

**CITY OF SEATTLE
ANALYSIS AND DECISION OF THE DIRECTOR OF
THE DEPARTMENT OF PLANNING AND DEVELOPMENT**

Application Number: 3009646
Applicant Name: Arthur Adamov and Peter Louie
Address of Proposal: 1205 South Lucile Street

SUMMARY OF PROPOSED ACTION

Land Use Application to allow an encroachment into a required side setback. The existing townhouse triplex development is under permit #6076433.

The following approval is required:

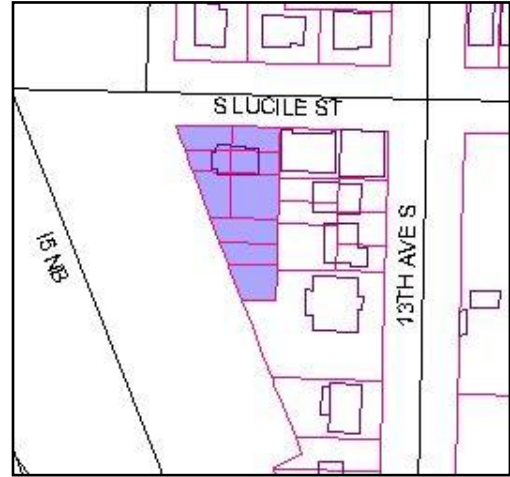
Variance - to allow a reduced side setback in a Lowrise 2 zone
(Seattle Municipal Code Section 23.45.014C1).

SEPA DETERMINATION: ☒ Exempt ☐ DNS ☐ MDNS ☐ EIS
☐ DNS with conditions
☐ DNS involving non-exempt grading or demolition, or
involving another agency with jurisdiction.

BACKGROUND DATA

Site Description

The specific property subject to this variance application consists of unit lots E and F of short subdivision number 3007272 recorded under King County Auditor's File No. 20080611900004. The unit lots contain two small partially completed townhouses. The subject properties are part of a parent lot which contains six unit lots. The property is located on the west side of Beacon Hill above Interstate 5 and is zoned Lowrise 2 (L2). The two unit lots and the parent lot are irregularly shaped and are both narrower along their south property line than their north property line. The site is bounded by South Lucile Street on the north, the Interstate 5 freeway on the west, and apartment structures to the east. A chain link fence, not constructed by the applicant and in existence for over ten years, appears as if it was intended to define the boundary line between the Interstate 5 right-of-way and the subject property.



Area Development

Across 13th Avenue South to the east is Cleveland High School. St. George's church is located on the block north of Cleveland High School to the northeast of the subject site. St. George's school is located two blocks northwest of the church. Adjacent to the west side of the property, Interstate 5 is elevated approaching the overpass over South Lucile Street. There is approximately 100 feet of the Interstate 5 right-of-way between the subject property and the actual Interstate 5 overpass and lanes. This 100 foot area is heavily landscaped and overgrown. The closest private property to the west of the site is an industrial facility, which appears to be over 100 yards away, across Interstate 5 and the BNSF railroad right-of-way in an IG2 U 65' zone in the Georgetown neighborhood.

Proposal

The variance request is for a variance from the five foot side yard (from the west property line) for the two townhouses on unit lots E and F. The two townhouses under construction are approximately 3.1 feet from the west property line.

Public Comments

No comment letters were received during the public comment period which ended November 26, 2008.

ANALYSIS - VARIANCE

As provided in SMC 23.40.020, variances from the provisions or requirements of Seattle Municipal Code Title 23 shall be authorized only when all of the facts and conditions stated in the numbered paragraphs below are found to exist:

- 1. Because of unusual conditions applicable to the subject property, including size, shape, topography, location or surroundings, which were not created by the owner or applicant, the strict application of this Land Use Code would deprive the property of rights and privileges enjoyed by other properties in the same zone or vicinity;***

There are several independent, unusual conditions, none of which were created by the applicant, which, if the Code is strictly applied, would deprive the property of rights and privileges enjoyed by other properties in the same zone or vicinity. First, the subject properties and the parent lot are irregularly shaped, narrowing at the south. This was created when a portion of the pre-existing lots were condemned by the State for Interstate 5. This pre-existing condition, not created by the applicant, especially when combined with access, open space and other Code requirements and the inherent difficulty in designing a development on a small, irregularly shaped site, deprives the applicant of the ability to design reasonably sized and configured townhouses on the parent lot in general, and the subject properties in particular, which would achieve the allowable density in the zone, a right enjoyed by other properties in the zone and vicinity.

Second, the State constructed a fence approximately 2.6 to 3 feet west of the actual boundary line of the subject properties. This fence line continues, in the same alignment, south and north of the subject properties. Under normal circumstances, the fact that the fence has been in its present location for many years and that the property east of the fence has been utilized by the owner of the subject properties and that owner's predecessors for over ten years could potentially constitute a case of adverse possession under which the fence line would, in all likelihood, have become the new boundary line between the properties. However, because adverse possession does not apply to properties owned by a government entity in its governmental capacity, the fence line has not become the boundary line. These facts therefore created the unusual circumstance where the owner of the adjoining property (the State) actually constructed the fence in question and adverse possession would normally apply, but the owner of the subject property has been deprived of this right to acquire the property by adverse possession, a right enjoyed by other properties in the vicinity and zone, because the adjoining property is Interstate 5 which is owned by the State.

The third unusual condition, which is related to but separate from the second conditions, is that inspectors from the State Department of Transportation, after viewing the subject properties, recently gave verbal permission to a representative of the owner of the subject properties to restore the old fence in its prior alignment. This new fence will therefore be more than 5 feet from the townhouse on the subject properties and shows an intent by the State to perpetuate the 5 foot setback between the townhouse and the de facto property line, the fence. The unusual circumstance is that as the adjoining property owner, the State has given consent to replace and perpetuate a fence line creating a de facto property line with an adequate setback. However, the strict application of the Land Use Code would not permit this to be recognized.

The Fourth unusual condition relates to the fact that the improvements on the adjoining property to the west (Interstate 5) are setback approximately 100 feet from the property line of the subject properties. This setback, which is larger than any setback requirement of the Land Use Code, is intended, among other things, to create open space, a buffer and permanent separation between Interstate 5 and the improvements on private property. However, the strict application of the Land Use Code would preclude considering this more than 100 feet of setback and permanent separation between this townhouse and any other structure.

2. *The requested variance does not go beyond the minimum necessary to afford relief and does not constitute a grant of special privilege inconsistent with the limitations upon other properties in the vicinity and zone in which the subject property is located;*

Based on the location of the existing foundation for the townhouse on the subject properties, the variance is the minimum necessary to allow for completion and occupancy of these townhouses. Townhouse development is allowed in this zone, and therefore completion of these townhouses will not go beyond the minimum necessary to afford relief. In addition, if the property to the west was privately owned, the applicant would, through adverse possession, in all probability own all the property east of the fence line, and no variance would be necessary.

Other properties in the zone and vicinity are not subject to this unique limitation having to do with the law of adverse possession. Further, there are many properties in the zone and vicinity with no, or inadequate setbacks as follows. Less than the minimum required front, side, and rear setbacks are provided at 5501 13th Avenue South. Less than the minimum required side yard setback is provided at 5531, 5533, and 5539 13th Avenue South. Less than the minimum required front yard setbacks is provided at 5303 5307 5311, 5315, 5319, and 5325 13th Avenue South. The church facility on the east side of 13th Avenue South in the block directly north of the subject properties (across South Lucile Street) provides less than the minimum required setback along South Brandon Street. The church parking lot incorporates South Brandon Street and has no setback whatsoever. There is a significant pattern in this area of properties with inadequate setbacks. Given this neighborhood pattern, variance relief would not constitute a grant of special privilege inconsistent with the limitations upon other properties in the vicinity and zone in which the subject property is located.

3. *The granting of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the zone or vicinity in which the subject property is located;*

The primary purpose for setbacks generally, and sideyard setbacks in particular, is to provide fire separation between structures as well as light and air between uses, primarily residential uses. There will be no detriment to the public welfare whatsoever by granting this variance. There is over 100 yards between the structures on the subject properties and the closest private development, an industrial use, to the west. There is more than 100 feet between this townhouse and the actual driving lanes of Interstate 5. No property or improvement, nor the general public welfare, will be detrimentally affected by granting this variance.

4. *The literal interpretation and strict application of the applicable provisions or requirements of this Land Use Code would cause undue hardship or practical difficulties;*

Denial of the variance would result the demolition of two townhouses on unit lots E and F at significant expense and loss. In addition, the two townhouses to the north of the subject property, which are in the same building as the townhouses on the subject properties (both of which have adequate setbacks) will have to be at least partially, if not completely, demolished and reconstructed at significant expense and loss. In either case, the literal interpretation and strict application of the side yard setback requirements of the Land Use Code would cause undue hardship and practical difficulties to the applicant.

5. *The requested variance would be consistent with the spirit and purpose of the Land Use Code and adopted Land Use regulations for the area.*

The Land Use Code provides for a variance process for relief from unusual conditions and situations that the rules of the Code could not anticipate. At the same time, the intent and purpose of the Code is to assure compatibility of uses within a zone and preservation of neighborhood character. The spirit and purpose of the side setback is to reduce the impact of encroachment on neighboring properties. The spirit and purpose of the Land Use Code regulations for Lowrise 2 zones such as this includes the promotion of townhouse development and other multifamily uses, allowing sufficient distance between structures for light and air and for fire protection. Granting this variance, which would allow the completion of construction and occupancy of the townhouses on unit lots E and F, would be consistent with the spirit and purpose of the Land Use Code and adopted Land Use regulations for the area.

DECISION - VARIANCE

Based on the above findings and analysis all of the facts and conditions stated in the numbered criteria of SMC 23.40.020, *Variances*, are found to exist. The requested variance is **APPROVED**.

CONDITIONS – VARIANCE

None.

Signature: _____ (signature on file) Date: April 02, 2009
Malli Anderson, Land Use Planner
Department of Planning and Development

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